

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DIANE ADEE)	
Claimant)	
VS.)	
)	Docket No. 219,928
ABILENE COUNTRY CLUB)	
Respondent)	
AND)	
)	
FARM BUREAU MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order dated April 9, 1997, entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

The Administrative Law Judge awarded claimant temporary total disability benefits commencing March 19, 1997. Respondent and its insurance carrier requested the Appeals Board to review two issues: (1) whether claimant was entitled to receive temporary total disability benefits as the result of an alleged May 29, 1996, accident and (2) if so, what date the benefits should commence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

This is an appeal from a preliminary hearing. K.S.A. 1996 Supp. 44-534a limits appeals from preliminary hearings to the following issues: (1) whether the employee suffered an accidental injury, (2) whether the injury arose out of and in the course of

employment, (3) whether notice and claim were timely made, and (4) whether certain defenses apply. The issues raised by respondent and its insurance carrier do not fall within one of those four listed categories. Therefore, K.S.A. 1996 Supp. 44-534a does not empower the Appeals Board with jurisdiction to hear this appeal at this stage of the proceeding.

Likewise, K.S.A. 1996 Supp. 44-551(b)(2)(A) does not grant the Appeals Board jurisdiction at this juncture of the proceeding to review and reweigh the evidence concerning claimant's entitlement to temporary total disability benefits. The Administrative Law Judge had the authority at preliminary hearing to award temporary total disability benefits and determine the date they should commence.

The respondent and its insurance carrier may preserve those issues for final award as provided by K.S.A. 1996 Supp. 44-534a(a)(2). That statute provides in pertinent part:

"Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts."

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review at this juncture of the proceedings the preliminary hearing Order dated April 9, 1997, entered by Administrative Law Judge Bryce D. Benedict and that this review should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Rodney C. Olsen, Manhattan, KS
Jeffrey E. King, Salina, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director